

December 16, 2003

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**JOINT RECOMMENDATION OF THE CHIEF ADMINISTRATIVE OFFICER AND  
DIRECTOR OF THE DEPARTMENT OF BEACHES AND HARBORS TO APPROVE  
AND AUTHORIZE EXECUTION OF LIMITED FOREBEARANCE AGREEMENT TO  
FACILITATE AMENDMENT TO AMENDED AND RESTATED LEASE – PARCEL  
125R (MARINA CITY CLUB) – MARINA DEL REY  
(4th DISTRICT)  
(3 VOTES)**

**IT IS JOINTLY RECOMMENDED THAT YOUR BOARD:**

1. Find that the proposed Limited Forbearance Agreement for Parcel 125R is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chairman of the Board to sign three copies of the Limited Forbearance Agreement (Agreement) for Parcel 125R, temporarily delaying implementation of scheduled rent increases to specified future dates.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The proposed Agreement is intended to provide a delay period during which negotiations can continue toward addressing infrastructure and capital improvement concerns relating to leasehold improvements on Parcel 125R in Marina del Rey, and are a continuation of a policy adopted by your Board in January 1999, wherein the Department was instructed to

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establish a deferred revenue account to deposit certain incremental rent increases from the leasehold pending possible agreement that would address those concerns. The Agreement provides for a limited rent increase deferral (not a waiver), and if final agreement is not reached and approved, the County will be made whole, with interest, for any deferred increased rental amounts. The Parcel 125R project element that is addressed is the leasehold condominium portion of the project and its 600 individual condominium subleases. The negotiations hinge, in part, upon the need for a temporary rent freeze and, thus, a deferral of the January 1, 2004 rent increase is required in order to provide sufficient time to assemble the numerous consents and amendments to individual condominium and condominium loan and other documents and preserve the elements of the proposed final agreement, should such final agreement be considered and approved by your Board. An overview of the proposed final agreement is included in the "Facts and Provisions/Legal Requirements" section later herein.

County and Marina City Club, L.P. (Lessee) are parties to that certain Second Amended and Restated Lease (Lease) dated October 27, 1987 that allowed establishment of a condominium plan and assignment of subleased condominium interests in the 600 high-rise units (Condominium Units) constructed on the leasehold. The leasehold also contains 101 low-rise apartment units, a promenade and certain common area facilities. Pursuant to the Lease, the Condominium Units were assigned to Marina City Condominiums, a California limited partnership, and subsequently individually assigned, on a condominium-by-condominium basis, to individual condominium sublessees (Condominium Sublessees), together with the undivided leasehold interest in the common areas and appurtenant rights applicable to each Condominium Unit.

While the parties to the Lease are the County and Lessee, and the parcel contains both apartments and 600 Condominium Units, the Lessee (in the case of the condominiums) acts essentially as a pass-through for the payment of the County's monthly "shadow rent" by the individual Condominium Sublessees. "Shadow rent" is an amount meant to approximate the rent the County would have received had the condominiums remained rental apartments. This device was designed as a quid-pro-quo for the County's consent



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to allow condominium sales of a sublease interest in the Condominium Units. The individual Condominium Sublessees have a possessory interest in the Condominium Units purchased and may sell their interest to others, however at the end of the lease term (2067), full title and use rights to all of the Condominium Units as well as all rights to common areas and all appurtenant rights will revert to the County. The amount of shadow rent was set at the date of the condominium conversion and now is adjusted annually in accordance with an index, reflecting changes in Westside Los Angeles residential prices and the Consumer Price Index (CPI). The County also receives a percentage of gross sale proceeds (Administrative Transfer Fee) as each Condominium Unit is "sold" (assigned) throughout the term of the Lease.

While the County looks to the Lessee for maintenance of the three condominium towers and associated common areas as a legal matter pursuant to the terms of the Lease, the primary financial burden of funding both the maintenance and any needed structural repairs falls to the individual Condominium Sublessees. In response to the Condominium Sublessees' requests for certain adjustments in shadow rent and aid in correcting building structural and infrastructure deficiencies, your Board directed that all amounts representing annual increases in shadow rent starting January 1, 1999 be held in a separate account pending consideration of the Condominium Sublessees' requests. Pursuant to negotiation between the County and the Condominium Sublessees, a plan to accomplish the expressed needs of the Condominium Sublessees and preserve the County's lease revenue benefits has been developed. Certain elements of the proposed plan (Plan) will call for a temporary "freeze" on increases in shadow rent, and utilization of the amounts of shadow rent increases accumulated pursuant to your Board's direction since January 1, 1999 (which will further accumulate during the proposed temporary freeze period) for repairs to specified leasehold infrastructure and other capital improvement items. Amounts so utilized under the Plan will be repaid, with interest, by the Condominium Sublessees over time from an increase in the Administrative Transfer Fee for each Condominium Unit and from further increases (if necessary) in shadow rent percentage in later years should the increased Administrative Transfer Fee amounts prove insufficient to fully amortize the amounts, with interest, advanced to the Condominium Sublessees and to recover the rent

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loss due to the temporary freeze on increased shadow rent.

The proposed Plan, including the detailed assumptions utilized to project repayment, interest and other financial terms, is based upon the temporary freeze of further shadow rent increases becoming effective January 1, 2004. However, the Plan requires that a number of preconditions be satisfied by the Lessee and Condominium Sublessees, including amendments, consents and other documentation that must be executed by each Condominium Unit sublessee, each sublessee Condominium Unit lender, and a lease amendment and consent executed by the Lessee and its lender, as well as consideration of the Plan and the aforementioned documentation by your Board, all of which will require additional time to complete. In order to preserve the benefits of the proposed Plan and to effectuate its provisions should it be eventually approved by your Board, we propose to delay implementation of the shadow rent increase scheduled to take effect January 1, 2004. The attached Agreement provides that the County will delay implementation of the scheduled January 1, 2004 shadow rent increase until September 30, 2004, on condition that, if the Plan does not become effective on or before June 30, 2004, any amounts that would otherwise be payable to County in the form of increased Administrative Transfer Fees due to Condominium Unit transfers that take place between June 30, 2004 and September 30, 2004 be paid to the County upon the effective date of the Agreement (all of the preconditions, including the aforementioned amendments, consents and other documentation having been completed and your Board's approval of a Lease amendment embodying the Plan having been obtained). If the Plan is not approved on or prior to September 30, 2004, the shadow rent increase scheduled for January 1, 2004 will be retroactively implemented and sums due, with interest, become immediately due and payable. Additionally, any Condominium Sublessee who does not join in the Plan on or before the above referenced dates will also be retroactively assessed with the increased shadow rent amounts and such amounts, with interest, will become immediately due and payable, with interest, by the Lessee who will enforce the payment against any such Condominium Sublessee through its sublease and enforcement deed rights.



#### Implementation of Strategic Plan Goals

In furtherance of County Goal #4, "Fiscal Responsibility," the recommended action will allow the Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees toward preservation of County assets by facilitating repairs and replacement of infrastructure and capital improvements in leasehold property that will eventually revert to County ownership. This recommendation is also consistent with the County's Strategic Plan Goal of Service Excellence, in that while maintaining appropriate protection of County interests, it allows for and facilitates the preservation of improvements on the leasehold through arrangements with the Lessee.

#### FISCAL IMPACT/FINANCING

Fiscal impact is limited to the delay in collection of certain portions of County rent for the leasehold, all of which is to be repaid, with interest, in the event the proposed Plan is not effectuated or repaid over the course of the lease term, with interest, if the proposed Plan is approved, the Plan being designed to be revenue neutral to the County.

#### FACTS AND PROVISIONS/LEGAL REQUIREMENTS

##### Proposed Plan Overview:

The proposed Plan that is intended to be implemented upon final documentation and agreement between the County and Lessee pursuant to a lease amendment will contain the following elements:

- County will extend a "freeze" on future increases in shadow rent for three years, beginning January 1, 2004 for all "Category A" Condominium Units (as discussed further below). Starting January 1, 2007, annual fixed increases in shadow rent of 3.75% will be implemented in lieu of the regular rent adjustment index now provided in the Lease.

- County will continue to accumulate shadow rent increases over 1998 base level during the three-year "freeze" period at the 2003 shadow rent rate.
- County will allow utilization of accumulated funds for reimbursement of certain defined capital improvements.
- Replacement of funds allowed to be utilized by Condominium Sublessees for specified capital improvements will come from increased County participation on sale proceeds.
- If such sums are not fully repaid, with interest, by 2022, then cash repayment is required, such repayment being secured by a first deed of trust on all Condominium Units.
- If, by 2019, it appears that extra County revenue from increased sale proceeds will not fully reimburse County for the present value of the loss due to the three-year freeze of increased shadow rent, a "lookback" provision provides for an upward adjustment of shadow rent increase from the fixed 3.75% annual level for the remainder of the Lease term, so that the County will be made whole for any such shortfall. Due to the delayed imposition of the effective date of the Agreement, and the consequent delayed imposition of the increase in County participation in sale proceeds, it is now likely that there will be an increase in shadow rent at the time of the 2019 "lookback".
- A precondition of the Plan is that not less than 80% of Condominium Sublessees elect to be bound by the Plan (as discussed further below).

**Details of Proposed Plan and Forbearance Agreement:**

County and Lessee have been negotiating, but have not finalized, an amendment to the Lease to effectuate the Plan. It is anticipated that the terms of the Plan will include



establishing two categories of Condominium Sublessees as follows: a) the first category will consist of those Condominium Sublessees who timely elect to be bound by the Plan (Category A Condominium Sublessees), and b) the second category will consist of all other Condominium Sublessees who do not timely elect to be bound by the Plan or that do not make any timely election (Category B Condominium Sublessees). The Plan will not become effective unless and until at least 80% of Condominium Sublessees elect to be bound by the Plan. It is further anticipated that the Plan will include, among others, the following terms:

A) Freezing the Lease shadow rent for each Category A Unit at its 2003 level through December 31, 2006 (the "Temporary Shadow Rent Freeze"), providing that, commencing January 1, 2007 and continuing each January 1 thereafter until at least January 1, 2018, the shadow rent for each Category A Unit shall be increased by 3.75%, rather than in accord with the current index specified in the Lease, and that effective as of January 1, 2019 and continuing each January 1 thereafter during the term of the Lease, the shadow rent for each Category A Unit may (but shall not necessarily) be increased by a fixed percentage greater than 3.75% if anticipated repayment of the present value of the loss due to the three-year freeze of increased shadow rent, with interest, has not occurred, and

B) Increasing the Administrative Transfer Fee to be collected by Lessee for the benefit of County (in addition to any similar fee otherwise payable to Lessee for its own account) upon a change in ownership of each Category A Condominium Unit from 1% to an amount equal to 2.5% of the gross sales price or other consideration given for such change in ownership.

The proposed Lease amendment will not be effective unless and until certain conditions precedent have been satisfied or waived by County and Lessee in writing as soon as practicable, and in all events no later than September 30, 2004, on condition that any amounts which would otherwise be payable to County in the form of increased Administrative Transfer Fees due to Condominium Unit transfers that take place between June 30, 2004 and September 30, 2004 be paid to the County upon the effective date of

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the proposed Plan. Given that one of the components of the Plan will include a temporary shadow rent freeze for all or substantially all of the Condominium Subleases, the Condominium Sublessees have requested that County refrain from implementing the increase in the shadow rent as to each of them, that is otherwise scheduled to be effective as of January 1, 2004 under the Lease (the "2004 Increase") and County is willing to do so, all upon the terms and subject to the conditions contained in the Agreement. In reliance upon and subject to the terms of the Agreement, Lessee will notify each of the Condominium Sublessees that Lessee is temporarily delaying the implementation of the increase in the shadow rent that is scheduled to be effective as of January 1, 2004.

County's agreement to delay the effect of the 2004 Increase shall not be effective unless and until each of the following have occurred by the applicable specified date: (i) Aetna Life Insurance Company, the current Lessee lender, shall have executed a Consent of Mortgagee in substantially the form attached to the Agreement and delivered the same to County not later than December 8, 2003; (ii) Essex Property Trust, Inc. (the prospective purchaser to Lessee's interest in the leasehold) shall have executed an Acknowledgement of Prospective Purchaser in form substantially as attached to the Agreement and delivered the same to County not later than December 8, 2003; and (iii) County shall have received an acceptable opinion of Lessee's counsel confirming enforceability of special charges against Category B Condominium Sublessees not later than December 12, 2003.

County's Limited Forbearance:

If the Forbearance Period commences (i.e., if the conditions contained in Paragraph 1 of the Agreement are satisfied on or before the periods specified in the Agreement), then:

- A) If the Forbearance Period (the period during which the scheduled 2004 shadow rent increase is suspended) ends because the Plan is agreed to and becomes effective, then the 2004 Increase shall apply only to the Category B Units and be retroactive to January 1, 2004 and, not later than thirty (30) days after the end of the Forbearance Period, Lessee shall pay County the sum of (a) the amount by which



the shadow rent for each Category B Unit (as increased by the 2004 Increase) was underpaid during the Forbearance Period, plus (b) interest on the amount described in clause (a) during the Forbearance Period at the rate equal to the investment yield earned on the County's Treasury Pool during such period, as contained in County's Report of Investments covering such period.

B) If the Forbearance Period ends due to the failure of the Plan to be approved or otherwise through the failure of one or more of the preconditions of effectiveness listed in the Agreement, then the 2004 Increase shall apply to each of the Condominium Sublessees (both the Category A Units and the Category B Units) and be retroactive to January 1, 2004 and, not later than thirty (30) days after the end of the Forbearance Period, Lessee shall pay County the sum of (a) the amount by which the Master Lease Shadow Rent for each Prepaid Sublease (as increased by the 2004 Increase) was underpaid during the Forbearance Period, plus (b) interest on the amount described in clause (a) during the Forbearance Period at the rate equal to the investment yield earned on the County's Treasury Pool during such period, as contained in County's Report of Investments covering such period.

Notice to Condominium Sublessees. Promptly after the Agreement has been executed and delivered by Lessee and approved by County, and all of the conditions set forth in Paragraph 1 of the Agreement (consent of the Lessee its lender, acknowledgment by the prospective leasehold purchaser, and legal opinion of Lessees counsel as to enforceability of special charges against Class B Condominium Sublessees) have been timely satisfied, Lessee shall send each of the Condominium Sublessees a Notice of Temporary Freeze of Shadow Rent in the form attached as Exhibit B to the Agreement (the "Condominium Sublessee Notice"). Lessee will agree not to alter the form of the Condominium Sublessee Notice or send any other notices or communications to the Condominium Sublessees concerning the subject matter thereof except as specifically authorized under the Agreement without County's prior written consent, which shall not be unreasonably withheld or delayed.

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Effect of Limited Forbearance: Nothing in the Agreement shall obligate, or constitute a commitment by, County to enter into the Plan. Moreover, County's agreement to the limited forbearance does not constitute a waiver of any other terms or provisions of the Lease, which has not been amended and remains in full force and effect, subject to this Agreement.

The Small Craft Harbor Commission is scheduled to consider the Agreement at its meeting of December 10, 2003 and we will advise your Board of the Commission's recommendation prior to your consideration of the Agreement. County Counsel has approved the Agreement as to form.

#### **ENVIRONMENTAL DOCUMENTATION**

The proposed Agreement is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines. This proposed action and Agreement, in and of themselves, do not authorize any construction or other activity.

#### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There is no impact on current County services as a result of the Agreement.

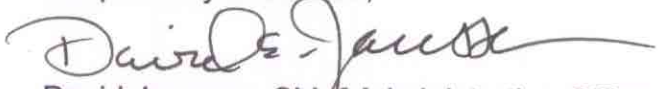
#### **CONCLUSION**


Please authorize the Chairman to execute three copies of the Agreement and direct the Executive Officer to return two executed copies of the Agreement to the Department of Beaches and Harbors.



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Respectfully submitted,

  
David Janssen, Chief Administrative Officer

  
Stan Wisniewski, Director  
Department of Beaches and Harbors

Attachment (1)

c: Executive Officer  
County Counsel

DJ/SW:rm

**LIMITED FORBEARANCE AGREEMENT**  
**(Re: Second Amended and Restated Lease [Improved Parcel] No. 55624,**  
**Parcel No. 125R – Marina del Rey Small Craft Harbor)**

**THIS LIMITED FORBEARANCE AGREEMENT** (this “**Agreement**”) is made as of December \_\_, 2003 by **COUNTY OF LOS ANGELES** (“**County**”) and **MARINA CITY CLUB, L.P.**, a California limited partnership (f/k/a J.H. Snyder Company) (“**Lessee**”), with reference to the following facts:

**RECITALS**

A. County and Lessee are parties to that certain Second Amended and Restated Lease [Improved Parcel] dated October 27, 1987 and identified as Lease No. 55624 (the “**Original Lease**”), as amended by (i) that certain First Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624 Parcel 125R Marina del Rey dated November 4, 1988, (ii) that certain Second Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624 Parcel 125R - Marina del Rey dated August 1, 1992, and (iii) that certain Amendment No. 3 to the Second Amended and Restated Lease (Improved Parcel) No. 55624 Parcel 125R – Marina del Rey Small Craft Harbor dated December 3, 2002 (the Original Lease, as so amended, is hereinafter referred to as the “**Lease**”), pursuant to which Lessee leases from County certain improved real property located in the Marina del Rey Small Craft Harbor of the County of Los Angeles, California (the “**Premises**”). All initially-capitalized terms used but not defined in this Agreement have the meanings given such terms in the Lease.

B. Pursuant to that certain Master Condominium Sublease dated as of January 5, 1988 between Lessee, as sublessor, and Marina City Condominiums, a California limited partnership (“**Master Sublessee**”), as sublessee (as amended, the “**Master Condominium Sublease**”), Lessee subleased to Master Sublessee, and Master Sublessee subleased from Lessee, certain portions of the Premises consisting of certain common areas, appurtenant rights and interior space within three high-rise towers then commonly known as the Marina City Club Tower Apartments and as depicted in that certain Condominium Plan recorded in the Official Records of Los Angeles County, California (the “**Official Records**”) on January 11, 1988 as Instrument No. 88-33404 (the “**Condominium Plan**”). Master Sublessee thereafter established a subleasehold condominium (sometimes also referred to as a “**Prepaid Sublease**”) regime with respect to the premises subleased by it under the Master Condominium Sublease and subsequently assigned all of its subleasehold interest under the Master Condominium Sublease on a condominium-by-condominium basis to individual condominium sublessees (sometimes also referred to as a “**Prepaid Sublessee**”); accordingly, Master Sublessee no longer has any interest in the Master Condominium Sublease. Each initial individual condominium sublessee was assigned, as to a particular condominium unit, the subleasehold estate in such unit together with the undivided subleasehold interest in the Common Area and the Appurtenant Rights applicable to such unit, as more particularly described in the Assignment and Assumption of Condominium Sublease for the Marina City Club Tower Apartments between Master Sublessee and such initial condominium sublessee and recorded in the Official Records (each an “**Original Assignment**”). As to each condominium unit, the Master Condominium Sublease and the applicable Original Assignment constitutes the “**Condominium Sublease**”.



C. The Lease requires Lessee to pay to County, among other payments, Percentage Rents for Prepaid Subleases, which are determined by multiplying the Shadow Rent by a specified applicable percentage rate, on a monthly basis. Under the terms of the Lease, the Shadow Rent for each Apartment Approved for Prepaid Subleases (as to each unit, the "**Master Lease Shadow Rent**"), and thus the Percentage Rents for Prepaid Subleases, is to be increased each January 1 based on the average percentage change in two indices, all as more particularly provided in Section 5.08.B of the Lease. Similarly, each Condominium Sublease requires the Prepaid Sublessee to pay to Lessee, among other payments, "Ground Rent", which is determined, in part, by the "Shadow Rent" under and as defined in the Master Condominium Sublease (as to each unit, the "**Condominium Sublease Shadow Rent**") and which Condominium Sublease Shadow Rent also is to be increased each January 1 based on the average percentage change in the same two indices, all as more particularly provided in Section 4.4.3 of the Master Condominium Sublease.

D. County and Lessee have been negotiating, but have not agreed upon, an amendment to the Lease (the "**Lease Amendment**"). It is anticipated that the terms of the Lease Amendment, if one is agreed to, will include establishing two categories of Prepaid Subleases: the first category will consist of those Prepaid Subleases as to which the applicable Prepaid Sublessees timely elect to be bound by certain modifications (the "**Modified Terms**") to their respective Condominium Subleases and the second category will consist of all other Prepaid Subleases (i.e., those Prepaid Subleases as to which the applicable Prepaid Sublessees timely elect not to be bound by the Modified Terms or that do not make any timely election) (each of the Prepaid Subleases in the first category described above is hereinafter referred to as a "**Category A Unit**" and each of the Prepaid Subleases in the second category described above is hereinafter referred to as a "**Category B Unit**"). It is further anticipated that the Modified Terms, if agreed to, will include, among others:

- (1) freezing the Master Lease Shadow Rent for each Category A Unit at its 2003 level through December 31, 2006 (the "**Temporary Shadow Rent Freeze**"),
- (2) providing that, commencing January 1, 2007 and continuing each January 1 thereafter until at least January 1, 2018, the Master Lease Shadow Rent for each Category A Unit shall be increased by 3.75%,
- (3) providing that, effective as of January 1, 2019 and continuing each January 1 thereafter during the term of the Lease, the Master Lease Shadow Rent for each Category A Unit may (but shall not necessarily) be increased by a fixed percentage greater than 3.75%, and
- (4) increasing the Administrative Transfer Fee to be collected by Lessee for the benefit of County (in addition to any similar fee otherwise payable to Lessee for its own account) upon a Change in Ownership of a Prepaid Sublessee's interest in each Category A Unit to an amount equal to 2.5% of the sales price or other consideration given for such Change in Ownership.

The Lease Amendment, if agreed to, will further provide that the amendments to the Lease contained therein, including the Modified Terms, shall not be effective unless and until certain



conditions precedent have been satisfied or waived by County and Lessee in writing. It is anticipated that the conditions precedent will include, among others, the conditions listed on Exhibit A.

E. County and Lessee desire to reach an agreement, if one can be reached, on all of the terms of the Lease Amendment and for all of the conditions precedent to the effectiveness thereof to be satisfied as soon as practicable, and in all events no later than September 30, 2004 (the "**Outside Effective Date Deadline**"); as provided in Exhibit A, certain of the conditions precedent must be satisfied by earlier dates. Given that one of the components of the Lease Amendment, if it is agreed upon and becomes effective, will include the Temporary Shadow Rent Freeze for at least eighty percent (80%) of the Prepaid Subleases (see item 6 on Exhibit A), Lessee has requested that County refrain from implementing the increase in the Master Lease Shadow Rent as to each of the Prepaid Subleases that is otherwise scheduled to be effective as of January 1, 2004 under the Lease (the "**2004 Increase**") and County is willing to do so, all upon the terms and subject to the conditions contained in this Agreement. County acknowledges that in reliance upon and subject to the terms of this Agreement, Lessee will notify each of the Prepaid Sublessees that Lessee is temporarily delaying the implementation of the increase in the Condominium Sublease Shadow Rent that is scheduled to be effective as of January 1, 2004, as provided in the Condominium Sublessee Notice (as defined below).

NOW, THEREFORE, with reference to the foregoing Recitals, County and Lessee hereby agree as follows:

1. Effectiveness. County's agreement in Paragraph 2 shall not be effective unless and until each of the following have occurred by the applicable specified date: (i) Aetna Life Insurance Company shall have executed the Consent of Mortgagee attached to this Agreement and delivered the same to County not later than December 8, 2003; (ii) Essex Portfolio, L.P. shall have executed the Acknowledgement of Prospective Purchaser attached to this Agreement and delivered the same to County not later than December 8, 2003; and (iii) the condition set forth in Part A of Exhibit A shall have been satisfied not later than noon (PST) on December 12, 2003.

2. County's Limited Forbearance. The implementation of the 2004 Increase shall be delayed until the earliest of the following dates (the period commencing on January 1, 2004 and ending on the earliest of such dates is hereinafter referred to as the "**Forbearance Period**"): (i) the date on which the Lease Amendment, if one is agreed to, becomes effective pursuant to the terms thereof; (ii) the date specified in Part B of Exhibit A, unless the conditions listed in said Part has been satisfied by such date; (iii) the Outside Effective Date Deadline; (iv) the date on which County notifies Lessee in writing that County has determined (said determination to be made by County in good faith) that the form and terms of the Lease Amendment will not be agreed upon or that the conditions precedent to the effectiveness thereof in Part C of Exhibit A will not be satisfied on or before the Outside Effective Date Deadline; and (v) the date on which Lessee notifies County that Lessee elects to terminate the forbearance and to implement the 2004 Increase (Lessee shall concurrently give the Prepaid Sublessees written notice of said election). If the Forbearance Period commences (i.e., if the conditions contained in Paragraph 1 are satisfied on or before December 31, 2003), then:



2.1 If the Forbearance Period ends on the date specified in clause (i) of Paragraph 2 above (i.e., because the Lease Amendment is agreed to and becomes effective), then the 2004 Increase shall apply only to the Category B Units and be retroactive to January 1, 2004 and, not later than thirty (30) days after the end of the Forbearance Period, Lessee shall pay County the sum of (a) the amount by which the Master Lease Shadow Rent for each Category B Unit (as increased by the 2004 Increase) was underpaid during the Forbearance Period, plus (b) interest on the amount described in clause (a) from the date originally due to the date paid at the rate equal to the investment yield earned on the County's Treasury Pool during such period, as contained in County's Report of Investments covering such period.

2.2 If the Forbearance Period ends on one of the dates specified in clauses (ii) through (v) of Paragraph 2 above, then the 2004 Increase shall apply to each of the Prepaid Subleases (both the Category A Units and the Category B Units) and be retroactive to January 1, 2004 and, not later than thirty (30) days after the end of the Forbearance Period, Lessee shall pay County the sum of (a) the amount by which the Master Lease Shadow Rent for each Prepaid Sublease (as increased by the 2004 Increase) was underpaid during the Forbearance Period, plus (b) interest on the amount described in clause (a) from the date originally due to the date paid at the rate equal to the investment yield earned on the County's Treasury Pool during such period, as contained in County's Report of Investments covering such period.

3. Notice to Condominium Sublessees. Promptly after this Agreement has been executed and delivered by County and Lessee and all of the conditions set forth in Paragraph 1 have been timely satisfied, Lessee shall send each of the Prepaid Sublessees a Notice of Temporary Freeze of Shadow Rent in the form attached hereto as Exhibit B (the "**Condominium Sublessee Notice**"). Except for a notice of Lessee's election to terminate the temporary forbearance described in Paragraph 2 (and thus the Forbearance Period), which notice shall be concurrently sent to County, Lessee shall not alter the form of the Condominium Sublessee Notice or send any other notices or communications to the Prepaid Sublessees concerning the subject matter thereof without County's prior written consent, which shall not be unreasonably withheld or delayed. Lessee shall have the right, at any time, to terminate the temporary forbearance described in Paragraph 2 (and thus the Forbearance Period), upon written notice to the Prepaid Sublessees and, upon such termination, immediately implement the increase in the Condominium Sublease Shadow Rent that, but for the forbearance described in the Condominium Sublessee Notice, would have been effective as of January 1, 2004.

4. Effect of Limited Forbearance. Nothing in this Agreement shall obligate, or constitute a commitment by, County or Lessee to enter into the Lease Amendment. Moreover, County's agreement in Paragraph 2 does not constitute a waiver of any other terms or provisions of the Lease, which has not been amended and remains in full force and effect, subject to this Agreement.

5. Integration. This Agreement is the entire agreement between County and Lessee with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between them with respect to the matters contained in this Agreement.

6. Waivers and Amendments. Any waiver or amendment with respect to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the

party to be bound thereby. No waiver by a party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of County and Lessee and their respective successors and assigns, including any purchasers or other assignee of the lessee's interest in the Lease.

8. No Third Party Beneficiaries. Except as provided in Paragraph 7, no third party, including any of the Prepaid Sublessees or the Owners Association, shall have any rights under this Agreement.

9. Rules of Construction. Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement is invalid or prohibited thereunder, such invalidity or prohibition shall be construed as if such invalid or prohibited provision had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this Agreement so long as such invalidity or prohibition does not deny either party of any material consideration to be received by it under this Agreement. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Paragraph headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to "Paragraphs" and "Exhibits" are to paragraphs of and Exhibits to this Agreement, unless otherwise specifically provided. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to its conflicts of law principles. The terms "include", "includes", "including" and similar terms shall be construed as if followed by the phrase "without limitation". The term "party" includes natural persons, firms, partnerships, limited liability companies, corporations and any other public or private legal entity. The term "amend" includes modify, supplement, renew, extend, replace, restate and substitute, and the term "amendment" includes modification, supplement, renewal, extension, replacement, restatement and substitution. The singular of any word includes the plural, and vice-versa.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

11. Exhibits. All of the Exhibits attached to this Agreement are incorporated into and are a part of this Agreement.



IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

COUNTY:

COUNTY OF LOS ANGELES

By:

\_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer-Clerk of the  
Board of Supervisors

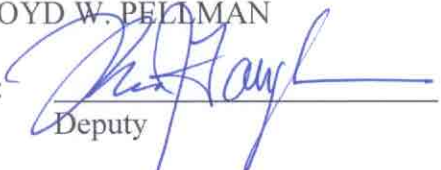
By:

\_\_\_\_\_  
Deputy

APPROVED AS TO FORM  
BY COUNTY COUNSEL:

LLOYD W. PELLMAN

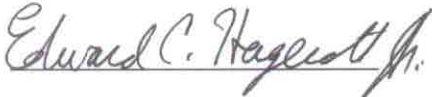
By:

  
\_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By:

  
\_\_\_\_\_  
Deputy

LESSEE:

MARINA CITY CLUB, L.P.,  
a California limited partnership

By:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Its:

By:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Its:

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

COUNTY:

COUNTY OF LOS ANGELES

By:

\_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer-Clerk of the  
Board of Supervisors

By:

\_\_\_\_\_  
Deputy

APPROVED AS TO FORM  
BY COUNTY COUNSEL:

LLOYD W. PELLMAN

By:

\_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By:

LESSEE:

MARINA CITY CLUB, L.P.,  
a California limited partnership

By:

Name: Jerome H. Skvidel

Its: Managing Partner

By:

Name: Milton Sommer

Its: Partner



## CONSENT OF MORTGAGEE

The undersigned, which is the current holder of the beneficiary's interest under the deed of trust that encumbers Lessee's interest in the Lease and leasehold created thereby and was recorded in the Official Records on September 24, 1990 as Instrument No. 90-1632802 (the "Mortgage"), hereby consents to the foregoing Agreement.

AETNA LIFE INSURANCE COMPANY

Dated: December 4, 2003

By:



Name: Peter S. Atwood

Its: Investment Manager

Dated December \_\_, 2003

By:

Name: \_\_\_\_\_

Its: \_\_\_\_\_


## ACKNOWLEDGEMENT OF PROSPECTIVE PURCHASER

The undersigned, which has entered into an agreement with Lessee to purchase all of Lessee's right, title and interest in to the Lease, hereby acknowledges receipt of the foregoing Agreement.

Dated: December 5, 2003

ESSEX PORTFOLIO, L.P.,  
a California limited partnership

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its general partner

By:   
Craig K. Zimmerman,  
Executive Vice President



## EXHIBIT A

### Amendment Conditions

#### A. Conditions to be Satisfied Not Later Than Noon (PST) on December 12, 2003

1. Counsel to the Owners Association or Lessee shall have delivered to County and Lessee a letter from counsel, in form and substance satisfactory to each of County and Lessee, which explains the mechanism under the Master Condominium Sublease that enables Lessee to collect monthly maintenance fees and/or supplemental maintenance fees from those (and only those) Prepaid Subleases which are Category B Units, and provides that such payment obligation is secured by the Subleasehold Deed of Trust against the applicable Prepaid Sublessee's condominium unit. If County is not satisfied with such letter, then Lessee may elect to cause this condition to be satisfied by delivering a legal opinion to County in form and substance satisfactory to County.

#### B. Conditions to be Satisfied Not Later Than February 15, 2004

2. The Lease Amendment shall have been executed by Lessee and delivered to County.

3. The execution of the Lease Amendment shall have been approved by each then-existing Approved Encumbrance Holder.

#### C. Conditions to Be Satisfied by the Outside Effective Date Deadline

4. The execution of the Lease Amendment and each of the other documents described therein or otherwise contemplated hereby shall have been approved by County's Board of Supervisors.

5. The execution of the Lease Amendment shall have been approved by each Approved Encumbrance Holder (other than those described in item 3 above).

6. The number of Category A Units must be at least four hundred eighty (480).

7. An Amendment to Condominium Sublease in the form approved by County (each a "**Condominium Sublease Amendment**") shall have been duly executed and delivered with respect to each of the Category A Units (i.e., by the Prepaid Sublessee of such unit and its Authorized Mortgagees (as defined in the Master Condominium Sublease)).

8. Lessee shall have consented in writing to a permanent and exclusive easement reserved by County, pursuant to a Declaration of Easement in form and substance satisfactory to County and Lessee, to permit County to widen the waterfront promenade.

9. Lessee shall have agreed, pursuant to a written instrument in form and substance satisfactory to County, to repair or replace certain boat slips adjacent to the Improved Parcel in a manner and in accordance with a schedule acceptable to County and Lessee.

10. If the Lease Amendment becomes effective after June 30, 2004, then, for each Change in Ownership of a Prepaid Sublessee's interest as to a Category A Unit that occurs after such date, Lessee shall have paid County the sum of (i) 1.5% of the sales price or other consideration given for such Change in Ownership (in addition to the 1% Administrative Transfer Fee collected by Lessee for County's benefit at the time of such Change in Ownership), plus (ii) interest on the amount described in clause (i) from and after the date of such Change in Ownership until the date of payment at the rate equal to the investment yield earned on the County's Treasury Pool during such period, as contained in County's Report of Investments covering such period. Such payments, if any, will be credited to Lessee for the purpose of any rent adjustment analysis performed in 2019 pursuant to the Lease Amendment and for the purpose of reducing any disbursed repair funds balance pursuant to the Lease Amendment.



MARINA CITY CLUB, L.P.  
 c/o J. H. Snyder Company  
 5757 Wilshire Boulevard, Penthouse 30  
 Los Angeles, CA 90036

December \_\_, 2003

Condominium Owner  
 Marina City Club Unit # \_\_\_\_\_  
 STREET ADDRESS  
 CITY, STATE ZIP

### YEARLY RENTAL ADJUSTMENT NOTICE-MARINA CITY CLUB

Pursuant to Section 5.08B of the Second Amended and Restated Master Lease for the Marina City Club ("Master Lease") the Shadow Rent is adjusted on January 1<sup>st</sup> every year (the "Yearly Rental Adjustment") based on the average percentage change of the CPI rental index and the Westside-Santa Monica average housing value index as published by the Real Estate Research Council of Southern California.

During this adjustment period, the CPI rental index increased from 198.4 in November 2002 to 210.0 in November 2003. The Real Estate Research Council Index increased from 120.6 in October 2002 to 143.4 in October 2003. The average increase of the two indices is 12.376123%. Upon applying the maximum allowable 8% annual increase to the Year 2003 Shadow Rent of \$2,313,695.21, the Shadow Rent effective as of January 1, 2004 is \$2,498,790.83 (Please note that the uncapped Shadow Rent amount is \$2,600,040.99. The set aside increase will be applied to future adjustments). **Therefore, the Ground Rent due for the condominium unit referenced above as of January 1, 2004 is \$ \_\_\_\_\_, payable on a monthly basis.**

### DELAYED IMPLEMENTATION OF 2004 YEARLY RENTAL ADJUSTMENT:

The County of the Los Angeles (the "County"), Marina City Club, L.P. (the "Master Lessee") and the Marina City Club Condominium Owners Association (the "HOA") are in negotiation to further amend the Master Lease and individual subleases, thereby instituting a new method for calculating the Yearly Rental Adjustment (the "New Method"). In anticipation that the New Method may be approved and adopted by the County and the Master Lessee in the near future, **the County has agreed to temporarily delay the implementation of the 2004 Yearly Rental Adjustment** (the "Temporary Delay"). A detailed "Limited Forbearance Agreement" between the County and the Master Lessee implementing the Temporary Delay has been executed and is on file at the MCC Executive Offices for your review during regular business hours.

If the County and the Master Lessee approve and adopt the New Method, condominium owners will have the option of abandoning the current method of calculating the Yearly Rental Adjustment and selecting the New Method for their individual condominium unit(s). The New Method will provide, among other things, that the Shadow Rent be frozen at 2003 levels for a period of three years and that it will be increased by a flat 3.75% each year thereafter subject to certain conditions and other adjustments. Additionally, at least 80% of condominium owners (and their mortgage lender(s), if any) will be required to execute amended lease documents implementing the New Method in order for the New Method to become effective for those owners who select it.

By signing and returning the attached agreement and acknowledgment form, you may, until further notice, continue to remit monthly ground rent payments (beginning as of January 1, 2004) in amounts equal to your monthly ground rent payments during 2003. Assuming the County and the Master Lessee reach final agreement and adopt the New Method, you will receive additional documentation explaining the New Method and

December \_\_, 2003

Condominium Owner  
Marina City Club Unit # \_\_\_\_\_  
Page 2 of 3

affording you the opportunity to select it for your individual condominium unit(s) during a specified enrollment period.

***PLEASE NOTE:***

***YOU MAY BECOME LIABLE FOR RETROACTIVE PAYMENT OF 2004 YEARLY RENTAL ADJUSTMENT AMOUNTS.***

Upon the occurrence of any of the circumstances described below, the 2004 Yearly Rental Adjustment will be applied retroactively (beginning as of January 1, 2004) as well as prospectively to your condominium unit(s) and within 10 business days of written notice from the Master Lessee you will be required to pay such retroactive amount in full (*i.e.*, the difference between ground rent payments made by you for 2004 under the Temporary Delay and the ground rent payments that you would have made in 2004 without the Temporary Delay), plus interest at a rate equal to the investment yield earned on the Los Angeles County Treasury Pool.

**CIRCUMSTANCES TRIGGERING YOUR RESPONSIBILITY FOR RETROACTIVE PAYMENT:**

1. You fail to sign the attached agreement and acknowledgement form and return it to the Master Lessee on or before February 10, 2004; or
2. You (or your mortgage lender(s), if any) fail to select the New Method and execute amended lease documents implementing the New Method during the enrollment period to be specified later; or
3. Less than 80% of condominium owners (and their mortgage lender(s), if any) select the New Method and execute amended lease documents implementing the New Method during the enrollment period; or
4. The County and/or the Master Lessee do NOT approve and adopt the New Method; or
5. The County and/or the Master Lessee terminate the Temporary Delay for any other reason.

Very truly yours,

MARINA CITY CLUB, L.P.

**PLEASE SEE PAGE 3 FOR THE AGREEMENT &  
ACKNOWLEDGMENT FORM.**



December \_\_, 2003

Condominium Owner  
Marina City Club Unit # \_\_\_\_\_  
Page 3 of 3

**AGREEMENT & ACKNOWLEDGMENT:**

Please read and sign below, make a photocopy of this three-page document for your files and return the original three-pages to Mr. Michael Carcieri in the Marina City Club Executive Offices or mail the original document to:

Marina City Club, L.P.  
c/o J.H. Snyder Company  
5757 Wilshire Blvd., Penthouse 30  
Los Angeles, CA 90036  
ATTN: Lon Snyder

***This document must be executed by all of the owners of the condominium unit referenced above and should be returned ASAP, but no later than***

***February 10, 2004.***

I hereby acknowledge that my ground rent for the condominium unit referenced above, including the 2004 Yearly Rental Adjustment, as of January 1, 2004 is \_\_\_\_\_, payable on a monthly basis.

I further acknowledge that the implementation of the 2004 Yearly Rental Adjustment is being temporarily delayed and that I am responsible at this time for remitting monthly ground rent payments in amounts equal to my monthly ground rent payments in 2003. I agree that upon the occurrence of any of the "Circumstances Triggering Your Responsibility for Retroactive Payment" described above, that the 2004 Yearly Rental Adjustment will be applied retroactively (beginning as of January 1, 2004) as well as prospectively to my condominium unit and that I will be required to pay those retroactive amounts, plus interest at a rate equal to the investment yield earned on the Los Angeles County Treasury Pool, within 10 business days of written notice from the Master Lessee.

Agreed to and Acknowledged by:

\_\_\_\_\_  
PRINT NAME OF OWNER

\_\_\_\_\_  
PRINT NAME OF CO-OWNER/CO-TENANT/JOINT-TENANT

\_\_\_\_\_  
SIGNATURE OF OWNER

\_\_\_\_\_  
SIGNATURE OF CO-OWNER/CO-TENANT/JOINT-TENANT

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

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